

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ANTHONY McCOY,

Plaintiff,

v.

Civil Action No. **3:12CV883**

B. ULEP,

Defendant.

MEMORANDUM OPINION

Anthony McCoy, a Virginia inmate proceeding *pro se*, brings this 42 U.S.C. § 1983¹ action. By Memorandum Order entered on February 19, 2013, the Court conditionally filed the action. The Court sent McCoy an affidavit for proceeding *in forma pauperis* and warned McCoy the Court would summarily dismiss the action if he failed “to complete the affidavit **in its entirety.**” (Feb. 19, 2013 Mem. Order ¶ 2.)

On April 23, 2013, the Court received the *in forma pauperis* affidavit from McCoy. Paragraph 6 of the affidavit directs the *in forma pauperis* applicant to: “List all of your prior cases that were dismissed as frivolous, malicious or failed to state a claim upon which relief could be granted, *i.e.*, pursuant to Fed. R. Civ. [P] 12(b)(6).” (ECF No. 6 ¶ 6.) In response to that direction, McCoy simply drew a line through the space provided for his response indicating that he has no cases that were dismissed as frivolous, malicious, or for failure to state a claim.

¹ That statute provides, in pertinent part:

Every person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

(*Id.*) McCoy's response in this regard is inaccurate and false. McCoy had at least three cases that he should have listed. *See, e.g., McCoy v. Kelly*, No. 3:11cv550, 2012 WL 6737789, at *4 (E.D. Va. Dec. 28, 2012); *McCoy v. Gebreyes*, No. 3:11CV474, 2012 WL 6706150, at *4 (E.D. Va. Dec. 26, 2012); *McCoy v. Kelly*, No. 3:11CV643, 2012 WL 2396863, at *2-3 (E.D. Va. June 25, 2012). McCoy's failure to fully and accurately complete the *in forma pauperis* affidavit warrants the dismissal of the present action without prejudice. Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall issue.

Date: 7-2-13
Richmond, Virginia

<p style="text-align: center;"><u>/s/</u> James R. Spencer United States District Judge</p>
